

Gentile Pontiac and Amalgamated Local Union 355.
Case 4-CA-11510

February 24, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On September 29, 1981, Administrative Law Judge Arline Pacht issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief to the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt her recommended Order.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Gentile Pontiac, Vineland, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the at-

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

In its exceptions to the Administrative Law Judge's Decision, Respondent contends that the Administrative Law Judge erroneously found that Supervisor Tasnaddy admitted that employee Dayton was being discharged for his union activity. Our examination of the record reveals no direct admission by Tasnaddy. Apparently, the Administrative Law Judge was referring to Dayton's credited testimony that Tasnaddy told him he was being fired because he failed to heed Respondent's warning to stop talking about the Union. We so conclude because the Administrative Law Judge's statement concerning the admission is followed by fn. 5 in which she specifically credits the testimony of Dayton as to the events surrounding his discharge. Accordingly, in affirming the Administrative Law Judge we rely upon the credited testimony of Dayton and not on any direct admission by Tasnaddy.

² Member Fanning would make the bargaining order prospective only. See his partial concurrence in *Beasley Energy, Inc., d/b/a Peaker Run Coal Company, Ohio Division #1*, 228 NLRB 93 (1977).

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

The Administrative Law Judge inadvertently failed to cite *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), for the interest rationale.

tached notice is substituted for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

After a hearing at which all parties were represented by their attorneys and were given the opportunity to present evidence in support of their respective positions, it has been found that we violated the National Labor Relations Act in certain ways and we have been ordered to post this notice and to carry out its terms.

The National Labor Relations Act, as amended, gives all employees the following rights:

- To engage in self-organization
- To form, join, or help a union
- To bargain collectively through a representative of your own choice
- To engage in activities together for the purpose of collective bargaining or to act together in order to seek improvement in your wages, hours, working conditions, and other terms and conditions of employment
- To refrain from any and all of these activities.

Accordingly, we give you these assurances:

WE WILL NOT create the impression of surveillance by telling employees that we heard rumors that they were forming a labor organization and had signed cards, and that we knew the identity of the union organizer.

WE WILL NOT induce employees to abandon a labor organization of their choosing, threaten employees with unspecified reprisals because of their activities on behalf of a labor organization, or interrogate employees concerning their union activities.

WE WILL NOT threaten employees with demotion should a union be selected as their collective-bargaining representative, nor discharge or otherwise discriminate against employees with regard to their hire or tenure of employment or any term or condition of employment for engaging in activities on behalf of a labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain collectively with Amalgamated Local Union 355 as the exclusive representative of our employees in the bargaining unit described below and, if an understanding is reached, WE WILL embody such understanding in a signed agreement. The appropriate unit is:

All mechanics, mechanic trainees and lot boys employed by Gentile Pontiac at its Vineland, New Jersey facility but excluding managerial employees and guards and supervisors as defined in the Act.

WE WILL reinstate Charles Dayton to his former or a substantially equivalent position of employment without prejudice to this seniority or any other rights or privileges, and will make him whole for any losses suffered as a result of our discrimination against him, plus interest.

GENTILE PONTIAC

DECISION

STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge: Upon charges filed against Gentile Pontiac (hereinafter called the Respondent), by Amalgamated Local Union 355 (hereinafter called the Union), on November 28, 1981, a complaint issued alleging that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (hereinafter called the Act), by interrogating employees about their union activities, threatening employees with demotion and other reprisals, creating the impression of surveillance, and inducing employees to abandon the Union by promoting a different labor organization. The complaint further alleges that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Charles Dayton and that, by its unlawful conduct, prevented the holding of a fair election. The Respondent filed a timely answer denying the allegations in the complaint.

Thereafter, on August 10 and 11, 1981, a hearing was held before me in Philadelphia, Pennsylvania, at which time all parties were given an opportunity to examine and cross-examine witnesses.

Based on the entire record in this case, including the testimony of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a New Jersey corporation, operates a retail automobile dealership in Vineland, New Jersey. During the past year, Respondent purchased and received at its Vineland facility products valued in excess of \$50,000 directly from points located outside New Jersey. During this same period, Respondent received gross revenues in excess of \$500,000. Upon the foregoing

facts, I find, as admitted in the answer, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

As part of its automobile dealership business, Respondent maintains a service department which is staffed by several mechanics, a lot boy, a parts counterman, and a service manager.

In mid-July, Respondent's then sole mechanic, Scott Wheeler, took a medical leave of absence. Shortly thereafter, Respondent's service manager, William Tasnaddy, contacted Charles Dayton, an experienced mechanic he had known for several years, and urged him to accept a job. Dayton, who had been working at a Texaco station as a class A mechanic for the past 3 years, initially was reluctant to take the job. Tasnaddy assured Dayton that, although Wheeler would be returning at some unspecified date, the job was permanent since there was more than enough work to keep several mechanics occupied, and offered him 57 cents an hour more than he currently was receiving. Approximately a week later, Tasnaddy called Dayton again and urged him to accept the job immediately. After Dayton filled out an employment application, Respondent's president and owner, Ronald Gentile, checked his reference with the Texaco station. Although he learned that Dayton was frequently late to work, Tasnaddy nevertheless made Dayton a firm job offer and pressed him to start working as soon as possible. A few days later, toward the end of July, Dayton began working for Respondent as a class A mechanic.

A. The Employees Organize

On September 24, Leonard Sofield, the Union's business agent, approached Dayton outside Respondent's facility, asked if he were interested in joining the Local, and suggested that Dayton contact him if he wished to pursue the matter.

Acting on this overture, Dayton met with Sofield at noon on September 26. After discussing the advantages of union membership and the purpose of the authorization card, Dayton signed a card and took several blank cards with him.¹ On returning to work, Dayton asked Robert Cassabone, a fellow mechanic Respondent hired in late August because of an increased workload, if he were interested in joining the Union. Cassabone signed an authorization card and returned it to Dayton who subsequently delivered it to Sofield.

On October 9, Sofield met with Dayton, Cassabone, and a third employee, Nick Pennington, who also signed an authorization card at this time. Pennington was hired in late September 1980, as a lot or detail person with responsibility for minor mechanical adjustments, washing,

¹ The cards stated, *inter alia*: "I hereby apply for membership in Amalgamated Local Union 355, and authorize and designate this union to represent me for collective bargaining with my employer."

waxing, and otherwise preparing the cars prior to delivery.

These three employees worked under similar conditions of employment: they were hourly paid, worked a basic 40-hour week, punched a timeclock, and wore identical uniforms. They reported directly to Tasnaddy who gave them their daily assignments, distributed overtime, and reviewed their performance. If they were to be late or absent, they contacted Tasnaddy in advance. Dayton and Cassabone worked entirely in the service area of the facility, while Pennington's duties required him to shift between the lot and the service area. In contrast to these three men, the parts manager and service manager were salaried and received a percentage of the gross profits from sales and repairs, respectively, had use of company cars, wore white shirts which bore labels identifying them by title, and worked in separate areas within the service area. Tasnaddy was primarily occupied with taking customers' repair orders, diagnosing their problems, and handling their complaints but spent approximately 15 or 20 minutes a day reviewing the mechanics' work.² The parts manager distributed materials to the workers on request and also sold parts to the public, with authority to set and discount prices. Occasionally, he substituted for Tasnaddy during his absence.

C. The Employer's Response to Unionization

The parties offered somewhat divergent accounts of Respondent's reaction to their organizational activity. For example, Dayton testified that on October 3 Tasnaddy summoned him and Cassabone to his office at the end of the workday and told them he heard a rumor that they had joined a union. The mechanics admitted only that they had been approached. Tasnaddy then stated that a union would be bad for them and that they should forget about it for a union would put an end to Respondent's past practices. He added that if they were interested in a union he could introduce them to a union representative whom he knew and produced the representative's business card.

Tasnaddy contended that his purpose in meeting with the mechanics was to reprove them for their tardiness and the quality of their work. He admitted telling the mechanics that he heard they were trying to start a union and offering them a business card from a union acquaintance, but denied making the antiunion comments attributed to him.

Dayton further related that on October 9 or 10, when Tasnaddy again adverted to rumors of a union, he simply shrugged. On or about the same date, Gentile approached him and said he hoped Dayton had put aside talk about a union. He added that a union shop would not be good for him and it would be in his best interests to forget about it. Gentile, on the other hand, recalled that Dayton raised the topic of a union and said he did not care which union represented him. He, too, denied making any other negative comments about unionization. Dayton stated that, immediately after his encounter with Gentile, Tasnaddy approached him, reasserted that the

Union would not be to the employees' advantage, that past practices would cease, and added that unions make promises which they do not keep.

Dayton further testified that on October 13 Tasnaddy contended that a reliable source informed him the employees had signed union authorization cards and accused Dayton of being the principal organizer. Dayton, and Pennington, who had joined them, admitted having signed cards in response to Tasnaddy's inquiry, but Dayton denied knowing whether Cassabone also signed a card. Tasnaddy warned Dayton that, if the Union succeeded, he would no longer be designated a class A mechanic. Tasnaddy did not at all dispute Dayton's recollection of this exchange except to say that, if the Union prevailed, everyone probably would be reclassified.

On the day after this encounter, Dayton was discharged. As Dayton described it, Tasnaddy told him at the end of the workday on October 14 that he had been warned to stop talking about the Union and, since he had chosen not to do so, Gentile ordered him fired. When Dayton asked if he could finish the workweek until payday on Friday, Tasnaddy conferred with Gentile and then informed Dayton that he had to leave immediately. He also told Dayton he could attribute the dismissal to a lack of work in order to be eligible for unemployment compensation. Tasnaddy offered a different version, testifying simply that he advised Dayton that Wheeler was returning and there was insufficient work for three mechanics.

Both Gentile and Tasnaddy explained that with Wheeler due to return on October 21, and with no need for three mechanics, Dayton was selected for discharge because his skill, productivity, and attendance record made him a less desirable employee than Cassabone. Specifically, Tasnaddy maintained that Dayton was incapable of performing electrical repairs, or working on diesel engines and automatic transmissions. Moreover, he was responsible for several "comebacks," that is, work returned by dissatisfied customers. Respondent also introduced documents which showed that Dayton worked fewer flat rate hours³ than did Cassabone and was late on 15 occasions in September whereas Cassabone clocked in late on 6 days in the same month. A closer inspection of the mechanics' tardiness records reveals, however, that, for the most part, they were no more than 2 or 3 minutes late.

Dayton took strong exception to Respondent's criticism, pointing out that he was trained and certified to repair automatic transmissions but that Respondent had never assigned him to such work. He further asserted he had only one comeback and that an examination of Respondent's repair orders would bear him out. He admitted to arriving late to work occasionally, but explained that he had warned Tasnaddy before taking the job that he served as a volunteer fireman and that his wife contacted Tasnaddy on the few occasions when his firefighting duties prevented him from arriving on time.

² Under the circumstances outlined here, Tasnaddy is, without doubt, a supervisor as defined in Sec. 2(11) of the Act.

³ Flat rates apply to scheduled fees charged for accomplishing various types of auto repairs within fixed periods of time.

C. Events Subsequent to the Discharge

On the day after Dayton's discharge, Pennington spoke to Gentile about his fear of losing his job. According to Pennington, Gentile replied that anyone who signed a card would be fired. Gentile claimed, however, that he assured Pennington that there was no reason to be apprehensive so long as he did his work. That same day, October 15, Sofield attempted to meet with Gentile to seek Dayton's reinstatement and request recognition. After waiting for Gentile for several hours, Sofield filed the instant charges with the Board.

Some months after Dayton's discharge, the other two employees who had signed cards left Respondent's employ: Pennington January 1981, and Cassabone in March. In April, Respondent hired two new mechanics in addition to Wheeler.⁴

IV. DISCUSSIONS AND CONCLUSIONS

A. Dayton's Dismissal Was Unlawful

The General Counsel contends, and Respondent denies, that Dayton was discharged because of his role in enlisting the support of his coworkers for the Union. In proving his case, the General Counsel is required to establish that Respondent's asserted reasons for Dayton's termination were pretextual, designed to obscure its real discriminatory motivation. I find abundant evidence to support the General Counsel's position.

Respondents rarely reveal their states of mind by openly declaring that a discharge was for discriminatory reasons. This is the rare case, however, for here, I find that Tasnaddy did admit to Dayton that he was being fired for his union activity.⁵ Even were I to discount Tasnaddy's confession, there is more than ample proof in the record establishing the illegality of Dayton's discharge.

By Tasnaddy's admission, it is uncontroverted that Respondent was aware of Dayton's leadership role in organizing the service employees. There also can be little doubt, based on the findings of the 8(a)(1) violations above, that Respondent was opposed to such activity. Of course, an employer is free to dislike unions and to express such views to employees without violating the Act. But Tasnaddy's references to an abolition of past practices and to a demotion for Dayton were not mere expressions of opinion; they were unlawful threats.

The abruptness and timing of the discharge provides additional grounds to view Respondent's stated motivation skeptically. See *Hurst Performance, Inc.*, 242 NLRB 121 (1979). Respondent insisted that Dayton was terminated to make way for a mechanic returning from dis-

ability leave. Gentile knew on October 7 that Wheeler would return on October 21, yet offered no explanation for Dayton's summary termination without notice on October 14, a week before Wheeler's scheduled return. Nor was any reason given as to why Dayton could not complete the workweek.

The Respondent maintained that Dayton was selected for discharge because there was insufficient work for three mechanics, and, since he was less productive, less skilled, and had a worse attendance record than Cassabone, he was the more dispensable employee. The flaws in Respondent's asserted reasons offer further proof that these reasons were conveniently invoked to conceal its antiunion purpose.

It strains credulity to accept Respondent's contention that Dayton was incompetent in certain mechanical areas. He commenced working as a mechanic in 1956 and performed at the grade A level for 3 years prior to taking the job offered by Respondent. Gentile checked Dayton's reference with his previous employer and reported no negative comments about his job performance there. Moreover, Tasnaddy never saw fit to communicate to Dayton any dissatisfaction with his performance. Equally unconvincing was Respondent's attempt to characterize Dayton as less productive than Cassabone based on the number of flat-rate hours each worked, since the total number of such hours accrued by an employee depended on the type of work to which he was assigned by Gentile or Tasnaddy. If the number of flat-rate hours earned by Dayton was a matter of genuine concern, Respondent had it within its control to shift him to other work.

Respondent asserted during the course of the hearing that it could produce business records which would show that there was insufficient work to occupy three mechanics, but failed to do so. Accordingly, an inference is warranted that such records would not substantiate Respondent's claim. See *Pacific Coast International Meat Co.*, 248 NLRB 1376, 1382 (1980); *Fred Branch d/b/a B & L Plumbing*, 243 NLRB 1016, 1022 (1979).

The record establishes that Dayton was tardy more frequently than was Cassabone. However, the attendance chart introduced by Respondent reveals that very few instances of late arrival exceeded 2 or 3 minutes. The Respondent never disciplined Dayton for his tardiness or warned him that continued infractions might be grounds for discharge. Given the *de minimis* nature of the times involved and Respondent's failure to treat this as a problem prior to Dayton's involvement in union activity, it is reasonable to infer that Respondent's reason for Respondent's harsh and sudden action was pretextual.

In sum, Dayton was not discharged for the reasons Respondent asserted. Rather, Respondent fired him on October 14 to purge itself of the person whom it held liable for bringing a union into its midst. Such motivations are proscribed by Section 8(a)(1) and (3) of the Act.

B. Independent 8(a)(1) Violations

The General Counsel contends that Respondent was responsible for the commission of numerous unfair labor

⁴ The record is ambiguous with regard to the dates on which Pennington and Cassabone ceased working for Respondent. Pennington testified he left in January 1981 while Cassabone remained. However, Gentile stated that Cassabone left in January and Pennington in March. I am inclined to rely on Pennington's recollection since this would be a more important date for him to recall than it would be for Gentile.

⁵ By his demeanor and the consistency of his testimony, Dayton impressed me as a forthright and credible witness. Tasnaddy appeared to be a man who, outside the courtroom, would say precisely what was on his mind. Indeed, in the courtroom, he confirmed having made numerous damaging admissions in this case, apparently unaware of the possible consequences under the Act.

practices based on its agents' conduct at a series of encounters in early October. I agree with some but not all of the General Counsel's contentions.

The General Counsel submits that on three dates, October 3, 9 or 10, and 13, Tasnaddy told Dayton he heard rumors that the employees were interested in forming a union, thereby creating the impression of surveillance. I do not concur that this conclusion is warranted with respect to Tasnaddy's first such reference on October 3 for the information apparently came to him fortuitously. However, I reach a different conclusion with regard to Tasnaddy's repeated references to such rumors a week or so later. In particular when on October 13, he referred to information from a "reliable source" and added that he knew the employees signed cards and that Dayton was the principal union organizer, Tasnaddy's knowledge no longer seemed a matter of local gossip, but, rather, the product of purposeful scrutiny of the employees' organizational efforts. Such observations, especially when made in the context of other unlawful statements, and when the employees had been circumspect about their union involvement, tend to inhibit employees' organizational activity and is, therefore, proscribed by Section 8(a)(1). See *GE's Trucking, Inc.*, 252 NLRB 947, 948 (1981).

There is no dispute that Tasnaddy encouraged the employees to contact a business representative whom he endorsed. Since he reported knowing that they were interested in another union, his comments constitute inducements to abandon the labor organization of their own choosing in violation of Section 8(a)(1). See *C. K. Smith & Co., Inc.*, 227 NLRB 1061, 1067-68 (1977). Also Respondent did not contradict Dayton's and Pennington's testimony that Tasnaddy questioned them as to whether they or Cassabone had signed union authorization cards. Such interrogation clearly contravenes Section 8(a)(1) of the Act.

I further find that on several occasions Tasnaddy warned Dayton of adverse consequences in the event of a union victory. On October 3, he vaguely alluded to a cessation of past practices, and, more specifically on October 13, admitted telling Dayton that he would be downgraded to a class B mechanic with the advent of the Union. These threats, whether vague or specific, were intended solely to intimidate, restrain, and coerce in contravention of Section 8(a)(1). See *Cone Mills Corporation, Revolution Division*, 245 NLRB 159, 165-166 (1979); *Rainbow Tours, Inc., d/b/a Rainbow Coaches*, 241 NLRB 589, 595 (1979).

The General Counsel further submits that Gentile's remarks to Dayton on or about October 13 were unlawful. In assessing whether an employer's statements are coercive or are simply expressions of free speech protected by Section 8(c) of the Act, the Supreme Court instructed in *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575, 617 (1969), that:

... the precise scope of employer expression ... must be made in the context of its labor relations setting. ... And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary

tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.

Here, it is significant that it was Gentile who initiated the contact with Dayton and first mentioned the Union.⁶ Since there had been no previous discussions about this matter between the two, and, since Tasnaddy only recently had warned Dayton about possible adverse consequences of continued union activity, it was hardly necessary for the Company's president to be more precise. Given this context, Gentile's remarks must be viewed as little more than a thinly veiled threat violative of Section 8(a)(1).

The Appropriate Unit

There is no serious dispute that the employees' signatures on the three cards admitted into evidence are authentic, nor that this number constituted a majority of Respondent's employees in the service department on October 15, 1980, the date on which the Union's business representative unsuccessfully attempted to meet with Gentile to seek recognition.

However, at the hearing, Respondent contested the inclusion of the parts manager in the unit described in the complaint as:

All mechanics, mechanic trainees, lot boys and parts countermen employed by Respondent at its Vineland, New Jersey facility but excluding guards and supervisors as defined in the Act.

I find merit in Respondent's position.

The evidence in this case clearly shows that the mechanics and lot boy shared a community of interests. However, unlike them, the parts manager received a salary plus commission, and drove a company car just as Tasnaddy did. His uniform, which differed from those worn by the three shop workers, identified him as a manager. His sales duties brought him into daily contact with the public and he had discretion to set discount prices on items he sold. He had no employees under his supervision, except in Tasnaddy's absence, but, by the same token, was not himself subject to direct supervision and worked independently. Accordingly, his interests and his allegiance were more closely aligned with management than with the other members of the described unit, making his inclusion in that unit inappropriate. See *Steven Davis, et al. d/b/a Carlton's Market*, 243 NLRB 837, 843 (1979).

A Bargaining Order is Warranted

Although the business agent was unable to formally request that the Respondent recognize and bargain with the Union, the General Counsel contends that a remedial bargaining order is warranted under the principles enunciated in *Gissel Packing Co., supra*. In *Gissel*, the Supreme

⁶ I do not credit Gentile's version of the encounter for it is inconceivable that Dayton would introduce the subject of the Union when he had taken some pains to conceal his involvement.

Court affirmed the Board's authority to issue a bargaining order not only in exceptional cases marked by outrageous and pervasive unfair labor practices, but also in less extraordinary cases where there are fewer "pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election process." *Id.* at 614. Applying these principles to the present case, I conclude that a bargaining order is necessary.

As shown by the findings above, as soon as Respondent's agents learned of the possibility that its service department employees were interested in unionization, they engaged in open and persistent opposition within a concentrated period of time. On numerous occasions, Tasnaddy created the impression of surveillance, suggested an alternative labor organization, interrogated the employees as to their union affiliation, suggested that certain unspecified company practices would be abolished, and, in no uncertain terms, threatened Dayton with demotion. Added to this, the president of the Company implied that it would be to Dayton's advantage to forget about the Union. These violations of Section 8(a)(1) were successive and, of course, reached each of the employees in the small shop. But such conduct would not alone constitute sufficient grounds for the imposition of a bargaining order were it not coupled with Dayton's discriminatory discharge.

The dismissal of a principal union activist is misconduct which the Board and the courts have long regarded as so serious and coercive as to justify a finding without extensive explication that it is likely to have a lasting inhibitive effect on the work force. See *N.L.R.B. v. Jamaica Towing Co.*, 632 F.2d 208, 212-213 (2d Cir. 1980); *Faith Garment Company, Decision of Dunhall Pharmaceutical, Inc.*, 246 NLRB 299 (1979), *affd.* 630 F.2d 630 (8th Cir. 1980).

In the present case, the abrupt discharge led to the departure not only of the chief union organizer, but also effectively removed one-fourth of the proposed unit. The lesson which Respondent meant to convey to the other employees could not have been lost—the price of active support for the Union was punishment, immediate and severe. That Dayton's discharge had precisely the effect that Respondent intended is plainly demonstrated by Pennington's expression of apprehension about his job security to Gentile on the day after the firing.

Respondent's remedial duties will include offering reinstatement to Dayton. However, his return to the shop will provide little assurance to other employees that Respondent is more receptive to union activity, since the offer will be made under duress. Under such conditions and after an extensive lapse in time, reinstatement and backpay cannot eradicate the harm that has been done. See *N.L.R.B. v. Jamaica Towing Co.*, *supra* at 213. What is more, Dayton's presence is likely to serve as a constant reminder that Respondent was willing to resort to extreme measures in order to defeat the Union.

Under these circumstances, a cease-and-desist order posted under Board and perhaps judicial compulsion would not root out the coercive effects on employees of Respondent's unlawful conduct. I also am doubtful that such an order would deter Respondent from continuing

its unfair labor practices when they were committed by the company president and his sole supervisor. Accordingly, I conclude that in light of the nature and number of Respondent's unfair labor practices, "that the possibility of erasing the effects of past practices and of insuring a fair election . . . is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order." *Gissel Packing Co.*, *supra* at 614-615.

Although none of the employees who signed cards remain in Respondent's employ, Board precedent dictates that I give evidence of employee turnover little or no weight in determining that a bargaining order should issue. See, *Keystone Pretzel Bakery, Inc.*, 256 NLRB 334 (1981); *Justak Brothers and Company, Inc.*, 253 NLRB 1054 (1980). To take such a factor into account would merely afford "an added inducement to the employer to indulge in unfair labor practices in order to defeat the union in an election. He will have as an ally, in addition to the attrition of union support inevitably springing from delay in accomplishing results, the fact that turnover itself will help him, so that the longer he can hold out, the better his chances of victory will be." *Justak Brothers, supra*, quoting *N.L.R.B. v. L. R. Foster Co.*, 418 F.2d 1, 5 (9th Cir. 1969), *cert. denied* 397 U.S. 990 (1970). Accord: *Hedstrom Co. v. N.L.R.B.*, 629 F.2d 305, 312 (3d Cir. 1980).

Although a bargaining order will entail the imposition of a union upon employees who had no voice in selecting or rejecting it, the Supreme Court observed in *Gissel, supra* at 613:

There is, after all, nothing permanent in a bargaining order, and if, after the effects of the employer's acts have worn off, the employees clearly desire to disavow the union, they can do so by filing a representation petition.

Accordingly, the propriety of a bargaining order to effectively cure the Respondent's unfair labor practices and to implement the will of the majority previously expressed, far outweighs any consideration that might otherwise be given to employee turnover.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. William Tasnaddy, Respondent's service manager, is a supervisor within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.
4. By discriminatorily discharging Charles Dayton, Respondent violated Section 8(a)(1) and (3) of the Act.
5. By creating the impression of surveillance by telling employees that it heard rumors they were forming a union, and by inducing employees to abandon that union, Respondent violated Section 8(a)(1) of the Act.
6. By threatening an employee with unspecified reprisals because of that employee's activities on behalf of the Union, Respondent violated Section 8(a)(1) of the Act.

7. By interrogating employees concerning their union activities, creating the impression of surveillance by telling employees that it heard all the employees had signed cards and that it knew the identity of the organizer, and threatening an employee with demotion should the Union be selected as the collective-bargaining representative, Respondent violated Section 8(a)(1) of the Act.

8. A unit appropriate for collective bargaining is:

All mechanics, mechanic trainees and lot boys employed by Respondent at its Vineland, New Jersey facility but excluding managerial employees and guards and supervisors as defined in the Act.

9. At all times since October 9, 1980, and continuing thereafter, Amalgamated Local Union 355 was designated by a majority of Respondent's employees as their exclusive collective-bargaining representative in the above-described unit within the meaning of Section 9(a) of the Act.

10. The unfair labor practices summarized above have prevented the holding of a free and fair election. Therefore, to best serve the purposes of the Act, Respondent is required to recognize and bargain with the Union as of October 15, 1980, the date on which the Union attempted to obtain recognition and bargaining.

11. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent violated the Act in certain respects, I shall recommend that it be required to cease and desist therefrom. Because Respondent committed numerous, pervasive, and serious violations of the Act, through its chief supervisor and company president, I conclude that unless restrained Respondent is likely to engage in continuing unlawful efforts in the future to prevent its employees from engaging in union and protected concerted activity. Accordingly, Respondent will be required to refrain from in any other manner infringing on employees' rights to engage in such activity. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

Affirmatively, Respondent will be required to offer Charles Dayton immediate and full reinstatement to the job of which he was unlawfully deprived, or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed. Further, Respondent will be ordered to make Dayton whole forthwith for any loss of pay he may have suffered by reason of his discharge on October 14, 1980, to the date of Respondent's offer to reinstate him, less any net earnings during that period in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as called for in *Florida Steel Corporation*, 231 NLRB 651 (1977).

In addition, the Respondent will be required to bargain with the Union on request, such bargaining to be retroactive to October 15, 1980.

Upon the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁷

The Respondent, Gentile Pontiac, Vineland, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Creating the impression of surveillance by telling employees that it heard talk about a labor organization; inducing employees to abandon the labor organization; threatening an employee with unspecified reprisals because of said employee's activities on behalf of the Union; interrogating employees concerning their union activities; creating the impression of surveillance by telling employees that it heard the employees had signed cards and that it knew the identity of the organizer; and threatening an employee with demotion should the Union be selected as the collective-bargaining representative.

(b) Discharging or otherwise discriminating against employees with regard to their hire or tenure of employment or any term or condition of employment for engaging in activities on behalf of a labor organization or for engaging in activity protected by Section 7 of the Act:

(c) In any other manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer Charles Dayton immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges and make him whole for any loss of earnings resulting from the discrimination against him.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records, and all other records necessary to analyze the amount of money due under the terms of this recommended Order.

(c) Upon request, recognize and bargain collectively with Amalgamated Local Union 355 as the exclusive collective-bargaining representative of the employees of Respondent in the appropriate bargaining unit described below:

All mechanics, mechanic trainees and lot boys employed by Respondent at its Vineland, New Jersey facility but excluding managerial employees, and guards and supervisors as defined in the Act.

⁷ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(d) Post at its Vineland, New Jersey, facility copies of the attached notice marked "Appendix."⁸ Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent's authorized representative, shall be posted by Respondent

⁸ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.